



STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION

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September 29, 2003

Mr. Roy D. Buckner
Assistant Assessor
Imperial County Assessor
940 W. Main Street
El Centro, CA 92243-2874

Re: Low Income Housing – Proper Valuation and Legality of Payment In Lieu of Taxes Agreement

Dear Mr. Buckner:

This letter is in response to your fax we received on April 1, 2003. You asked us to review a letter from Housing (“H”) that was attached to your fax. H operates a senior apartment community and the owner is a 501(c)(3) income tax-exempt organization that also qualifies for the property tax welfare exemption. The assessor has valued the property at cost and backed it up with an income approach valuation based upon restricted rents and the present worth of the tax credits. The resulting income approach value upheld the cost approach value. H is in the process of applying for a loan but the lender will not consider the value of the welfare exemption from property tax in qualifying for a loan. For that reason, in order to qualify for the loan H is interested in entering into a Payment in Lieu of Taxes (PILOT) Agreement with the county. H represented that similar agreements have been entered into with other jurisdictions. You asked for our opinion on two questions.

Question 1: What is the proper method for valuing low-income housing properties?

LTA 98/51 provides the Board’s position regarding the valuation of low-income housing properties. We believe that the valuation method should be adjusted to conform to LTA 98/51 and recent court decisions.

Question 2: Is a county permitted by law to enter into a PILOT Agreement with a property owner?

No. We believe that there is no constitutional or statutory authority to enter into a PILOT Agreement as proposed by H. We further believe that if H were to enter into a PILOT agreement it would risk losing its property tax welfare exemption.

Methodology for Valuation of Low Income Housing Projects

On October 1, 1998, the Board issued LTA No. 98/51¹ *Issues in the Valuation of Section 515 Multifamily Housing Projects*. The LTA continues to provide the Board's current position regarding the valuation of low-income housing projects. In *Maples v. Kern County Assessment Appeals Board* (2002), 96 Cal.App.4th 1007, the court held that section 515 property should be valued by capitalizing the income with a rate derived through the band-of-investment method. In calculating this capitalization rate, the court held that it was appropriate for the debt component to reflect the subsidized one percent interest rate. In its decision, the court also held that the cost approach is inappropriate for valuing section 515 property.

You indicated that the assessor has valued the project using the cost approach and backed up the valuation by using an income approach and valuing the present worth of the tax credits. As indicated above, the court determined that the cost approach is inappropriate for valuing section 515 property. While the assessed value may not change, the assessor should conform the valuation methodology for low-income housing to comply with the provisions of LTA 98/51 and the recent court decision.

Regarding the treatment of the tax credits in the valuation, the issue was scheduled for consideration by the Property Taxes Committee on September 24, 2003, as the result of a draft LTA, dated June 2003, developed for discussion purposes during the interested parties' process. At this time, however, the item has been removed from the Property Taxes Committee agenda pending further consideration and possible legislative consideration. The draft LTA has not been submitted to the Board and, therefore, does not reflect a position on the issue by the Board.

Property in Lieu of Taxes Agreement

In the letter from H they state:

The PILOT Agreement stipulates the amount of taxes we will pay on the property for the next 17 years. Since the County is getting a diminimous amount now, we can agree to a slightly higher number. [Bank] has stated that they will accept a PILOT Agreement with the County, and the amount of property taxes described therein, as an indication of the true amount of property taxes for loan purposes.

Article XIII, section 6, of the California Constitution provides:

The failure in any year to claim, in a manner required by the laws in effect at the time the claim is required to be made, an exemption or classification which reduces a property tax shall be deemed a waiver of the exemption or classification for that year.

The proposed PILOT Agreement specified that the payment would be a tax. Therefore, we believe that the proposed PILOT Agreement would constitute a waiver of the welfare exemption for the years in question pursuant to Article XIII, section 6. So long as H qualifies

¹ Available at http://www.boe.ca.gov/proptaxes/pdf/98_51.pdf.

for the welfare exemption, payment of the property taxes or payment in lieu of a tax would be considered a waiver of the welfare exemption. In essence, H is requesting a partial welfare exemption, for which there is no provision in the law.

Under Article XIII, section 1 all property in this State is taxable unless exempted by law. Thus, absent a welfare exemption a welfare exemption the property would be taxable. The law provides several specific payments in lieu of property taxes, which are each authorized by the Constitution or a statute. There is no constitutional or statutory provisions that would authorize a PILOT Agreement as described in your request and we believe that a specific constitutional or statutory provision would be required to authorize such an agreement.²

Furthermore, Revenue and Taxation Code section 214, subdivision (g)(2)(B) provides:

In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do the following:

* * * *

Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

In the proposed PILOT Agreement, a portion of the funds that would have been necessary to pay property taxes would be used to pay the property taxes as provided in the PILOT Agreement. The funds would not used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households. Instead, the funds would be deposited into the County general fund, as a tax would be. Accordingly, we believe that H could not make the certification required to claim the welfare exemption.

H stated that it has PILOT Agreements with other jurisdictions similar to the one contemplated in this situation. We cannot provide any opinion with respect to other agreements without knowledge of the specific facts and circumstances related to those agreements. The fact that they have other agreements has no bearing with respect to our opinion in this request.

The views expressed in this letter are only advisory in nature; they represent the analysis of the legal staff of the Board based on present law and the facts set forth herein, and are not binding on any person or public entity.

² Some examples where the law allows payments in lieu of property taxes include, but not limited to, Revenue and Taxation Code section 10758 (Vehicle License Fees), Revenue and Taxation Code section 23182 (Bank, Financial Corporations and Insurance Companies in Lieu Tax), Revenue and Taxation Code section 5717 (Racehorse Tax), California Constitution Article XIII, subsection 3(j) and Revenue and Taxation Code section 38101 (Timber Tax), Government Code section 52181 (related the property of an authority where the in lieu payment is for the benefit of an energy project owned by the authority), Revenue and Taxation Code section 237 (related to tribal housing), Revenue and Taxation Code section 3791.5 (related to certain publicly owned property), and Revenue and Taxation Code section 4653 (related to property belonging to the United States).

Paul A. Steinberg

/s/ Paul A. Steinberg

Senior Tax Counsel

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cc: Ms. Linda Trahey, Chief Appraiser